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SECRETARY OF STATE

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
WATER QUALITY CONTROL BOARD**

**IN THE MATTER OF:**

**TENNESSEE WASTEWATER  
SYSTEMS, INC.**

**DIVISION OF WATER  
POLLUTION CONTROL**

**Docket No. 04.30-095289A**

**OGC Cases: 06-0531, 06-0547, 06- 0530  
06-0548, 07-0190**

**AGREED ORDER**

This matter came to be heard before the Tennessee Water Quality Control Board upon the Respondent's appeal of the nine State Operating Permits (hereinafter "Permits") enumerated above. The Board, a quorum present, hereby adopts the following Facts, Conclusions of Law, and Order to which the parties have agreed and submitted to the Board for approval, as evidenced by the signatures below.

**PARTIES**

**I.**

Paul E. Davis is the duly appointed Director of the Tennessee Division of Water Pollution Control (hereinafter the "Division") by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "Department").

## II.

Tennessee Wastewater Systems, Inc. (hereinafter the "Respondent ") is a public utility company, the owner/operator of several waste water collection and treatment systems in Tennessee, and the holder of Permits, issued by the Division, that are required for the operation of those systems. Service of process on the Respondent is made to the registered agent: Larry Williams, 329 Union Street, Nashville, Tennessee 37209.

## FACTS

## III.

The Division issues Permits in accordance with Tennessee Code Annotated §69-3-101 through §69-3-120. The continuance and reissuance of those permits is contingent upon the permit holder meeting all stated conditions and requirements, as stated in Tennessee Code Annotated §69-3-108.

## IV.

The Respondent filed timely appeals on the following Permits, which were either up for renewal, or a new issuance:

01025	(Hoffman Subdivision)	issued 10/3/06
05057	(Cross Plain)	issued 10/3/06
99022	(Cornerstone)	issued 3/31/06
00011	(Harbor Point)	issued 7/1/06
98049	(Tucker's Crossroads)	issued 9/30/06
05067	(River's Edge Phase II)	issued 10/3/06
01023	(Wilson County-Poplar Ridge)	issued 9/30/06

05008	(Wilson County-Mann Road)	issued 9/30/06
05074	(Wilson County-Sugar Flat-Ramsey)	issued 10/3/06

Two particular permit conditions were appealed by the Respondent:

1. The requirement to fence the drip field disposal areas;
2. The requirement to disinfect the waste water before it entered the drip line system, in order to meet the particular E. coli limit for that facility.

The Division believed that public health and welfare warranted one or the other of these requirements to be included statewide in all new Permits, and all renewed Permits. The Respondent agreed with the Division that public health and welfare was paramount, but believed those requirements should be based on the particular terrain, type of public access, system demand, and degree of risk, on a site-by-site determination.

On October 29, 2007, the Respondent and the Division met and agreed to the appropriate disinfectant limitations and fencing requirements to be inserted in the permits under appeal in this matter. The effluent limitations and testing requirements assigned to a particular type of drip field, when disinfection is used, will be based on the type of public access anticipated and included in the permit, as defined in this Agreed Order.

## **CONCLUSIONS OF LAW**

### **V.**

1. The Division of Water Pollution Control is authorized by §69-3-101 et seq to protect the waters of the State for the health of its citizens.
2. The Division of Water Pollution Control is authorized by §69-3-101 et seq to set and enforce effluent standards and access restrictions on the drip fields of permitted waste water drip irrigation systems.
3. The possibility that potentially harmful levels of bacteria and organisms may be present in the waste water require either fencing to prevent or impede public access, or disinfection to significantly reduce the concentration of the bacteria in the wastewater being dripped, or a combination of the above, in order to adequately protect to public health.
4. Effluent standards and access restrictions on drip fields of permitted waste water drip irrigation systems are necessary because:
  - harmful bacteria may be present in the wastewater;
  - drip fields are often near residential development;
  - the protection of unsuspecting children require these measures;
  - buried lines are close to the surface and bodily contact with harmful wastewater is possible;
  - prudence and public confidence require it.

## **ORDER**

### **VI.**

WHEREFORE, PREMISES CONSIDERED, the Board hereby ORDERS and AGREES that:

1. Drip fields shall be assigned to one of the following drip field access classifications:

A. **OPEN ACCESS:** Where drip areas are used for ball fields, playgrounds, picnic areas, golf courses, or similar uses. Disinfection is required of the treated effluent prior to discharge in the drip field.

**Effluent limitation:** E.coli shall not exceed 23 Colony Forming Units (hereinafter "CFU") per 100 ml. Monthly testing is required, which includes the proper collection and analyzing of samples, and submission of the results to the Division. Proper sampling requires retrieving a representative sample of what the system is producing with no maintenance on the system being performed immediately prior to the sample being obtained, including, but not limited to, cleaning the Ultraviolet ("UV") disinfection device.

**Signage:** All drip areas shall have warning signs posted at regular intervals around the perimeter of the area. The sign language shall clearly indicate that the drip areas are being used for dispersal of treated effluent.

All signs shall be placed so they are viewable to the public from all reasonable approaches.

B. **ATTRACTIVE ACCESS:** Where open spaces are maintained similar to residential lawns with easy access and with grass maintained at short heights, but with the area undeveloped for recreational purposes. Disinfection is required of the treated effluent prior to discharge in the drip field.

**Effluent limitation:** E.coli shall not exceed 941 CFU per 100 ml. Quarterly testing is required, which includes the proper collection and analysis of samples, and submission of the results to the Division. Proper sampling requires retrieving a representative sample of what the system is producing with no maintenance on the system being performed immediately prior to the sample being obtained, including, but not limited to, cleaning the Ultraviolet ("UV") disinfection device.

In the event there are three consecutive E.coli samplings exceeding 941 CFU per 100 ml, sampling will be required every two weeks. When there are six (6) consecutive months of satisfactory E.coli readings (such period to include warm and cool/cold months and periods of high occupancy (if seasonal occupancy is expected), the Respondent shall be allowed to return to quarterly sampling.

**Signage:** All drip areas shall have warning signs posted at regular intervals around the perimeter of the area. The sign language shall clearly indicate that the drip areas are being used for dispersal of treated effluent. All signs shall be placed so they are viewable to the public from all reasonable approaches.

C. **INHIBITED ACCESS:** Where drip areas are allowed to return to natural vegetation and are used for wildlife food plots or other similar uses and where routine access by humans is discouraged by growth of vegetation. Disinfection is required of the treated effluent prior to discharge in the drip field.

**Effluent limitation:** No limitation, but quarterly sampling is required, which includes the proper collection and analysis of samples, and submission of the results to the Division. Proper sampling requires retrieving a representative sample of what the system is producing with no maintenance on the system being performed immediately prior to the sample being obtained, including, but not limited to, cleaning the Ultraviolet (“UV”) disinfection device.

In the event there are three consecutive E.coli samplings exceeding 941 CFU per 100 ml, sampling will be required monthly. When there are six (6) consecutive months of satisfactory E.coli readings—such period to include warm and cool/cold months and periods of high occupancy if

seasonal occupancy is expected—the Respondent shall be allowed to return quarterly sampling.

**Signage:** All drip areas shall have warning signs posted at regular intervals around the perimeter of the area. The sign language shall clearly indicate that the drip areas are being used for dispersal of treated effluent. All signs shall be placed so they are viewable to the public from all reasonable approaches.

D. **DIFFICULT ACCESS:** Where drip areas are located on generally steep (>10% slopes or up to the maximum allowed by the Division) or heavily wooded slopes, and access by humans will be rare due to terrain, location, or vegetation. Disinfection is required of the treated effluent prior to discharge in the drip field.

**Effluent limitation:** No limitation, but quarterly sampling is required, which includes the proper collection and analysis of samples, and submission of the results to the Division. Proper sampling requires retrieving a representative sample of what the system is producing with no maintenance on the system being performed immediately prior to the sample being obtained, including, but not limited to, cleaning the Ultraviolet (“UV”) disinfection device.

In the event there are three consecutive E.coli samplings exceeding 941 CFU per 100 ml, sampling will be required monthly. When there are six



(6) consecutive months of satisfactory E.coli readings (such period to include warm and cool/cold months and periods of high occupancy (if seasonal occupancy is expected), the Respondent shall be allowed to return to quarterly sampling.

**Signage:** All drip areas shall have warning signs posted at regular intervals around the perimeter of the area. The sign language shall clearly indicate that the drip areas are being used for dispersal of treated effluent. All signs shall be placed so they are viewable to the public from all reasonable approaches.

**FENCING:** As an alternative to disinfection in Attractive Access, Inhibited Access or Difficult Access drip areas, the Respondent shall be allowed instead to properly fence the waste water drip fields. All fencing of the drip fields shall be a minimum of 4 feet in height and consist of 4-strand barbed wire, chain link, boards, or vegetative barriers sufficient to discourage human entry. All designs are subject to Division approval.

2. The Respondent and the Division will discuss and agree within 45 days of approval of this Agreed Order on the appropriate drip field access classifications for the permits under appeal in this matter.
3. The Respondent will install the required disinfection systems or fencing at the sites that are the subject of this Order within four (4) months after each permit is reissued by the Division.

4. The Division may reassess and re-evaluate as they deem necessary the access classification of each drip field. In the event future development, population growth, or other demands on the system and drip fields require a change in the access classification of the drip field, the Respondent shall comply with all requirements for the new classification. The Division's determination shall be subject to any regulatory or statutory rights of appeal.
5. The Respondents shall otherwise conduct its business in accordance with the Act and rules promulgated pursuant to the Act.
6. The Respondent shall hereafter comply with the conditions and requirements of their State Operating Permits, subject to any regulatory or statutory rights of appeal.
7. In entering into this Agreed Order, the Respondent has knowingly waived its rights to a hearing pursuant to T.C.A. § 69-3-115 and any appeal therefrom.

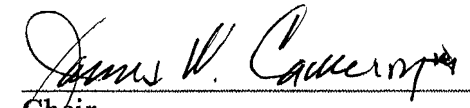
#### **REASONS FOR DECISIONS**

The above Findings of Facts and Conclusions of Law, and the Orders contained herein were made in an effort to provide a reasonable process to be

followed to abate the issue's alleged in this matter. The Board encourages settling cases in the interest of avoiding the time and expense of prolonged litigation.

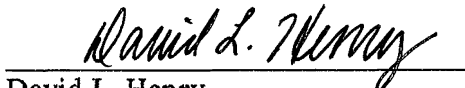
Adopted and approved by the majority of the Board, a quorum being present,  
on this 20 day of November, 2007.

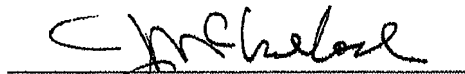
**FOR THE TENNESSEE WATER QUALITY CONTROL BOARD:**

  
Chair

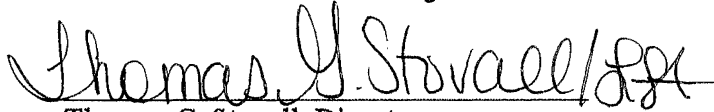
A copy of this Agreed Order shall be served upon the Respondent by certified mail, return receipt requested. This final decision and order shall become effective upon entry.

**APPROVED FOR ENTRY:**

  
David L. Henry  
Tennessee Department of Environment & Conservation  
Office of General Counsel  
20<sup>th</sup> Floor, L & C Tower  
401 Church Street  
Nashville, Tennessee 37243-1548

  
Jere McCulloch, Esquire  
Rochelle McCulloch & Aulds, PLLC  
109 North Castle Heights Avenue  
Lebanon, Tennessee 37087  
Attorney for the Respondent

Entered in the Office of the Secretary of State, Administrative Procedures  
Division, this 21st day of November, 2007.

  
Thomas G. Stovall, Director  
Administrative Procedures Division

### **RIGHTS OF APPEAL**

The Respondent is hereby notified and advised of the right to administrative and judicial review of this FINAL DECISION AND ORDER pursuant to the Tennessee Uniform Administrative Procedures Act, T.C.A. §§ 4-5-316, 4-5-317 and 4-5-322 and the Water Quality Control Act, T.C.A. §§ 69-3-111 and 69-3-115.

T.C.A. § 4-5-317 gives any party the right to file a Petition for Reconsideration within fifteen (15) days after the entry of a Final Order, stating specific grounds upon which relief is requested.

T.C.A. § 4-5-322 and 69-3-111 provide the right of judicial review by filing a Petition in the Chancery Court of Davidson County within sixty (60) days of entry of this Order.